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In Memoriam
Ralph E. Axley
1902 - 1995

Peter Weisenberger
1946 - 1992

August 13, 1996

SENT VIA FEDERAL EXPRESS

Federal Communications Commission
Office of the Secretary
1919 M Street N.W.
Washington, D.C. 20554

Re: Notice of Proposed Rule Making
Our File: 8765.44558

DOCKET FILE COPY ORIGINAL

To The Honorable Members of the Federal Communications Commission:

Enclosed are ten (10) copies of comments submitted by PCS Wisconsin, LLC in response to the Notice of Proposed Rule Making in WT Docket No. 96-148.

If you have any questions regarding these comments please feel free to contact us.

Very truly yours,

AXLEY BRYNELSON



Grant B. Spellmeyer

GBS:mb
Enclosure

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FEDERAL COMMUNICATIONS COMMISSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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AUG 15 1996

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In the Matter of

**Geographic Partitioning and Spectrum
Disaggregation by Commercial Mobile
Radio Services Licensees**

WT Docket No. 96-148

**Implementation of Section 257 of the
Communications Act-
Elimination of Market Entry Barriers**

GN Docket No. 96-113

**PCS WISCONSIN, LLC'S COMMENTS SUBMITTED IN RESPONSE
TO NOTICE OF PROPOSED RULEMAKING**

PCS WISCONSIN, LLC ("PCS Wisconsin"), an authorized bidder in the D, E and F Blocks of the Broadband PCS Auction, hereby submits the following comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission ("Commission") in the above-entitled dockets.

SECTION 1. LICENSE ELIGIBILITY. PCS Wisconsin concurs with the tentative conclusion of the Commission that a more liberal partitioning policy will allow PCS spectrum to be used more efficiently and will speed service to underserved areas as well as increasing competition. The increased ability to partition PCS licenses will have the effect of allowing many additional entities to become involved in the provision of PCS services thereby geometrically increasing competition within the industry and by allowing these new providers

to concentrate on areas that otherwise might go unserved or fall lower on the priority scales for build-out.

SECTION 2. AVAILABLE PARTITIONING LICENSE AREA. Although PCS Wisconsin supports the proposal of the Commission to allow partitioning along county lines, we believe that allowing partitioning along other established geopolitical boundaries such as municipalities or local exchange carrier service territories would greatly increase the ability of small businesses to compete in the provision of these services. There are instances in which potential partitionees would be interested in serving only certain portions of the area encompassed by county lines given that the size of the entire county makes an attempt to partition the entire county economically unfeasible for certain small businesses in situations where the counties in question contain significant population and geographic area. PCS Wisconsin recognizes that the Commission proposes to provide for a waiver process but believes that the administrative requirements of seeking a waiver constitute a barrier to entry that will significantly impede attempts by small businesses to undertake partitioning activities. PCS Wisconsin further believes that there should not be any limitations on the size of the geographic area to which nonentrepreneur block licenses would be allowed to partition. To impose such a restriction would impose additional barriers to entry.

SECTION 3. LICENSES WITH COMPETITIVE BIDDING BENEFITS. PCS Wisconsin does not believe that there should be any requirements that a partitioning license holder be required to pay, on an accelerated basis, a portion of the outstanding principal balance which it owes under an installment payment plan obtained from the Commission under the

original auction process. Imposing such a requirement will place incumbent license holders in a position of finding it noneconomically advantageous to enter into partitioning agreements if they will be forced to accelerate installment payment plan payments. In addition, such a requirement will place additional burdens on small businesses attempting to partition into licenses because they will receive pressure from incumbent license holders to make accelerated payments to the original license holder to cover the amounts of these new accelerated payments. PCS Wisconsin strongly believes that a partitionee should not be required to guarantee the payment of a portion of the partitioner's obligation. This requirement would have the effect of placing additional capital strains upon small businesses and would therefore be a significant barrier to entry or participation in this process.

In regard to the Commission's solicitation of comment regarding whether unjust enrichment requirements should be made on a proportional basis, and if so, on what basis, PCS Wisconsin believes that if the Commission does choose to impose unjust enrichment repayment requirements, that it do so on a proportional basis based upon the population within the partitioned area in proportion to the total population of the BTA or MTA in question. PCS Wisconsin believes that it would be administratively difficult for the Commission to develop a system to value and differentiate relative market values to the various partitioned areas within a geographic or market area. Consequently, we believe that the price paid by the partitionee should not be considered in making such determination, but rather, the determination should be based solely on the original license price paid attributed on a proportional basis based upon population.

PCS Wisconsin supports requiring a continuing obligation with respect to the entire initial geographic area in the event that a partitionee defaults upon its obligations. Imposing such a requirement will insure that customers in partitioned areas still receive service as soon as they would have in the absence of partitioning.

SECTION 4. LICENSE TERM. PCS Wisconsin agrees with the Commission's proposal that a partitionee be authorized to hold its license for the remainder of the partitioner's original 10-year license term. Such a proposal represents what appears to be the only workable solution for consistently judging the Commission's requirements under its rules and for allowing everyone to stay on the same renewal cycle. PCS Wisconsin additionally believes that the partitionee should be afforded the same renewal expectancy as the MTA and BTA license holder enjoys. In the event that the partitionee can demonstrate that it has provided substantial services during its past license term and has substantially complied with Commission rules, it should be granted a preference at a comparative renewal proceeding. If substantial service requirements have not been met then the partitioned area should revert to the original license holder and be dealt with in the same manner as the original license is in the renewal process.

SECTION 5. CONSTRUCTION REQUIREMENTS. PCS Wisconsin believes that the two build-out options proposed in paragraphs 33 and 34 of the Notice of Proposed Rulemaking represent a reasonable system for guaranteeing that spectrum will not be warehoused as a result of partitioning. After the initial 10 year period, some additional build-out requirement may be appropriate in the interests of providing universal service.

SECTION 6. TIMING OF DISAGGREGATION. The Commission's tentative conclusion that its current prohibitions on disaggregation constitute a barrier to entry for small businesses is correct. Removal of this barrier should immediately spur numerous small businesses to seek entry to the industry through the disaggregation method. We strongly support the elimination of the condition that a licensee satisfy the five-year build-out requirement before disaggregating. PCS Wisconsin does believe that the restriction on allowing entrepreneur licenses to be disaggregated to nonentrepreneurs during the first five-year holding period is reasonable to protect the interests of small business by reserving to them opportunities that are not otherwise available to small providers on an equal playing field.

SECTION 7. LIMITS ON SPECTRUM DISAGGREGATION. PCS Wisconsin does not believe that there should be a limit upon the amount of spectrum that a licensee should be required to retain above and beyond the one mhz block of paired frequencies which has been suggested by the Commission in paragraph 42 of its Notice of Proposed Rulemaking. Allowing flexibility in disaggregating spectrum will guarantee that additional entities are able to enter the marketplace. License holders should, however, be required to retain enough spectrums to meet the substantial service requirements. PCS Wisconsin opposes the proposed requirements stated at paragraph 43 of the notice requiring broadband pcs licensees to be licensed for more than a minimum of one mhz

SECTION 8. MATTERS RELATING TO DISAGGREGATION OF ENTREPRENEUR BLOCK LICENSES. PCS Wisconsin supports allowing disaggregation to entrepreneur block licensees at any time and to all other individuals after the five-year holding

period. As indicated above regarding partitioning, PCS Wisconsin believes that partitionees should be required to guarantee any portion of the disaggregatee's original auctions related obligations in the event of a default or bankruptcy by any of the parties to the disaggregation transfer.

SECTION 9. CONSTRUCTION OBLIGATIONS UNDER DISAGGREGATION.

PCS Wisconsin prefers the Commission's proposal contained at paragraph 53 of the Notice of Proposed Rulemaking in an effort to discourage spectrum warehousing and to encourage expedited build-out and provision of services within the relevant markets.

SECTION 10. DISAGGREGATED LICENSE TERM. PCS Wisconsin agrees with the Commission's conclusion that a disaggregated portion of spectrum should be held for the remainder of the disaggregator's original 10-year license term. In addition, allowing a preference at a comparative renewal proceeding is likewise appropriate in the instance of a disaggregated spectrum license.

SECTION 11. COMBINATION OF PARTITIONING AND DISAGGREGATION.

PCS Wisconsin strongly supports any proposal which would allow for a combination of partitioning and disaggregation. Although we believe that the Commission's intent in its Notice of Proposed Rulemaking is ambiguous, we believe that "in combination" should mean that a company could acquire 10 mhz of spectrum partitioned from one county of a 30 mhz. C-Block license. This will maximize the opportunities for small businesses to enter the marketplace and compete, thereby fostering the goals as set forth by the Commission.

Dated this 13th day of August, 1996.

PCS WISCONSIN, LLC

By:

